

**Local 8, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO and PPG Industries, Inc. and Glaziers, Architectural Metal Workers and Glass Workers, Local 1204, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO, Case 30-CD-111**

26 August 1983

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS  
JENKINS AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by PPG Industries, Inc., herein called the Employer, alleging that Local 8, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, herein called Iron Workers or the Respondent, has violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Glaziers, Architectural Metal Workers and Glass Workers, Local 1204, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO, herein called Glaziers.

Pursuant to notice, a hearing was held before Hearing Officer Suzanne Clement on 3 May 1983. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Glaziers filed a motion to quash the 10(k) notice of hearing which was opposed by the Employer and Iron Workers.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

The Board has considered the briefs and the entire record in this case, and hereby makes the following findings:

### I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that PPG Industries, Inc., is a Pennsylvania corporation engaged in the manufacturing, distribution, and installation of glass, metal, and related products from its Milwaukee, Wisconsin, facility. During the past calendar year, a representative period, the Employ-

er, in the course and conduct of its business, purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that the Iron Workers and the Glaziers are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE DISPUTE

#### A. Background and Facts of the Dispute

The Employer had been signatory to a national agreement between the Iron Workers International and the National Joint Trade Board of the Glass and Glazing Industry (succeeded by the Glazing Contractors Labor Committee) since 1961, and has also been signatory to a local collective-bargaining agreement with the Glaziers for several years. In the early summer of 1982 the Employer was selected to perform the aluminum window wall installation work on Tower Two of the twin tower, 10-story Mortgage Guarantee Investment Corporation Plaza in Milwaukee, Wisconsin. A different building contractor had earlier constructed Tower One of the Plaza employing members of the Glaziers to perform the window wall work. Said work (which is identical for both towers) consists of constructing aluminum window frames and then anchoring the frames to the exterior of the building. The work does not include the installation of glass into the window frames.

After hearing rumors that the Employer had decided to assign the window wall work for Tower Two of the Plaza to members of the Iron Workers, Glaziers Business Manager Joseph Sofio filed a contractual grievance on 29 September 1982 disputing the assignment. The Employer's branch manager for the Milwaukee area, Frank Hudson, responded by letter dated 18 October 1982, stating that the Employer had in fact formally assigned such work to members of the Iron Workers and that the Employer would not arbitrate the Glaziers' dispute over the work assignment except before the Impartial Jurisdictional Disputes Board, unless both Unions agreed to a different means of resolving the dispute. Joseph Sofio notified the Employer by letter dated 12 November 1982 that the Glaziers insisted that the Employer arbitrate the dispute under the collective-bargaining agreement between the Employer and the Glaziers.

Both the Employer and the Glaziers maintained their respective positions over the next several months, and on 7 February 1983 the Glaziers filed suit in Federal district court to compel arbitration. By letter dated 25 March 1983 and in a telephone conversation on 28 March 1983 the Employer informed Iron Workers Business Agent Russ Pride of the Glaziers' suit, and the Employer's intention to reconsider its assignment of the window wall work to the Iron Workers. Pride responded in the phone conversation that should the Employer reassign the work, the Iron Workers would strike and shut down the job. In a letter dated 8 April 1983 Pride confirmed to the Employer that the Iron Workers would take "appropriate economic action" against the Employer if the Iron Workers were removed from the job.

### *B. The Work in Dispute*

The work in dispute consists of the installation of aluminum window wall in Tower Two of the Mortgage Guarantee Investment Corporation Plaza in Milwaukee, Wisconsin.

### *C. The Contentions of the Parties*

The Glaziers contends that the 10(k) proceeding should be dismissed since there is no reasonable ground to believe that the Iron Workers has engaged in 8(b)(4)(D) conduct as the Iron Workers' threat of work stoppage was not seriously made, and since the Employer is party to a collective-bargaining contract with the Glaziers which requires the Employer to submit the work assignment dispute to bilateral arbitration. Alternatively, the Glaziers contends that the work in dispute should be awarded to employees represented by it based on its collective-bargaining agreement with the Employer and economy and efficiency.

The Employer and the Iron Workers contend that the work in dispute should be awarded to employees represented by the Iron Workers based on the collective-bargaining agreement between them, industry practice, employer past practice, relative skills, economy and efficiency, employer preference, and determinations of the Impartial Jurisdictional Disputes Board.

### *D. Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that: (1) there is a reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (2) the parties have not agreed upon a method for the voluntary adjustment of the dispute.

With respect to (1), above, the Glaziers contends that the threats of work stoppage made by Iron Workers Business Agent Russ Pride were purposefully designed to secure jurisdiction of the Board and therefore were not in actuality threats of the nature which Section 8(b)(4)(ii)(D) proscribes. We find, however, there is reasonable cause to believe that Business Agent Pride was serious in stating that there would be a strike and shutdown of the worksite should there be a reassignment of the disputed work. We reach this conclusion in light of the circumstances surrounding the threats, including the Glaziers' filing of suit to compel arbitration and the Employer's letter of 28 March 1983 stating that as a result of the suit it was reconsidering its work assignment to the members of the Iron Workers, and in the absence of any evidence in the record indicating the threat was not seriously made. Accordingly, we find that there is reasonable cause to believe Section 8(b)(4)(D) was violated.

With respect to (2) above, the record contains no evidence that an agreed-upon method exists for the voluntary adjustment of the dispute.<sup>1</sup> Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

### *E. Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.<sup>2</sup> The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.<sup>3</sup>

The following factors are relevant in making the determination of the dispute before us:

#### *1. Collective-bargaining agreements*

On 22 February 1961 the National Joint Trade Board of the Glass and Glazing Industry (which included the Employer in its membership) entered into a national agreement with the Iron workers International under which it bound the board's

<sup>1</sup> In regard to Glaziers' contention that the 10(k) proceeding should be dismissed since its collective-bargaining agreement with the Employer includes an arbitration clause covering all disputes with the Employer, the Board has recently reiterated its longstanding rule that it will not defer to arbitration if all parties have not agreed to be bound by a single tripartite arbitration. *Electrical Workers IBEW Local 702 (Central Illinois Public Service Co.)*, 254 NLRB 1406, 1407 (1981). In view of our findings herein, Glaziers' motion to dismiss and quash the 10(k) proceedings is hereby denied.

<sup>2</sup> *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting System)*, 364 U.S. 573 (1961).

<sup>3</sup> *Machinists Lodge 1743 (J. A. Jones Construction Co.)*, 135 NLRB 1402 (1962).

members to follow the work assignment provisions set forth in the agreement signed the same day between the Iron Workers International and the Brotherhood of Painters, Decorators and Paperhangers of America. The Unions' agreement, commonly referred to as the "blue book," sets forth to whose members various construction work, including the installation of windows, is to be assigned. The Painters Union abrogated the blue book in 1974. The successor to the National Joint Trade Board, the Glazing Contractors Labor Committee (which also includes the Employer as a member), however, has bound its members to continue to follow the original agreement and its requirement that the work assignment provisions of the blue book be adhered to. Article V of the blue book provides that the installation of metal windows in a building over two stories is to be performed by members of the Iron workers.

On the other hand, article I of the local collective-bargaining agreement between the Employer and the Glaziers provides that the installation of metal in window construction is to be performed by members of the Glaziers. Accordingly, this factor does not support an assignment of work to either group of employees.

## 2. Industry practice

A nationwide work project exhibit presented by the Employer indicates that members of the Iron Workers have performed window wall work in locations throughout the country. However, the testimony of witnesses for both the Glaziers and the Employer demonstrates that members of both the Iron Workers and the Glaziers have often performed such work in the Milwaukee area. Accordingly, this factor does not support an assignment of work to either group of employees.

## 3. Employer past practice

In both its out-of-state construction projects and those in the local Milwaukee area which involved the installation of window wall the Employer has awarded the window wall work to members of the Iron Workers. Accordingly, this factor favors an award of the work to the group of employees represented by the Iron Workers.

Both the apprenticeship programs for the Iron Workers and the Glaziers provide instruction on the installation of window wall. Furthermore, members of both Unions have performed window wall work in the Milwaukee area, with members of the Glaziers most recently having performed the window wall work on Tower One of the Mortgage Guarantee Investment Corporation Plaza. Accord-

ingly, this factor does not support an award of the work to either group of employees.

## 5. Economy and efficiency of operation

The Employer's manager of labor relations, George Krock, and its branch manager for Milwaukee, Frank Hudson, both testified that it is more efficient and economical to use members of the Iron Workers to install window wall. However, neither stated the basis for his opinion. Furthermore, George Krock conceded that Iron Workers' wages are approximately \$4 more per hour than those of Glaziers. The Glaziers submitted no evidence regarding economy and efficiency. Accordingly, this factor does not support an award of the work to either group of employees.

## 6. Employer preference

The Employer initially assigned the disputed work to members of the Iron Workers. Later the Employer notified Iron Workers Business Agent Russ Pride by letter that it was reconsidering the assignment. The Employer's letter, however, makes clear that this action was taken in response to the Glaziers' suit to compel arbitration over the dispute and thus should not be deemed reflective of the Employer's true preference. The initial assignment combined with an unequivocal statement of preference to use members of the Iron Workers made at the hearing by Branch Manager Frank Hudson demonstrates that this factor favors an award of the work to those employees.

## 7. Joint Board determinations

In 31 instances in which the Impartial Jurisdictional Disputes Board faced a claim between the Iron Workers International and the Brotherhood of Painters and Allied Trades (with whom the Glaziers is affiliated) for window wall work, the Disputes Board awarded the work to employees represented by the Iron Workers. No determinations of the Disputes Board awarding disputed window wall work to the Glaziers were submitted at the hearing. Accordingly, this factor favors an award of the work to the group of employees represented by the Iron Workers.

## Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by the Iron Workers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of the Employer's past practice, the Employer's preference, and Joint Board determina-

tions. In making this determination we are awarding the work in question to employees who are represented by the Iron Workers, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

#### DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of

the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees of PPG Industries, Inc., who are represented by Local 8, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, are entitled to perform the installation of aluminum window wall in Tower Two of the Mortgage Guarantee Investment Corporation Plaza currently under construction in Milwaukee, Wisconsin.